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### REMARKS

Claims 12 - 21, 31, 36, 41 and 50-63, 65, 67-69, 71-73 and 75 -104 are pending. Claims 18-21, 31, 41, 68, 69, 71-73 and 75-97 are allowed. Objection is made to Claims 16, 65, 67, 101 and 104. Claims 12-15, 17, 50-63, 98-100, 102 and 103 are rejected and the rejection is made final.

Applicants appreciate the courteous interview extended by Examiner Mosher on September 14, 2005. The considerable preparation by the Examiner for the interview is greatly appreciated. During the interview, support for the proposed amendments to the claims was discussed as well the lost interference count. The substance of the discussion is included in the remarks below.

Support for the above amendments can be found particularly at pages 10-12 of the specification.

Regarding the issue of interference estoppel and the interference count, discussion was had about the fact that the interference count was presented differently in Papers 107 and 108. Applicants submit that Paper No. 107 is a Memorandum Opinion and Order that includes the decision on preliminary and other motions. It clearly sets for the new interference count as

A composition according to claim 1 of Inglis '261 or any of claims 1 or 24 of Inglis '364 or a method according to any of claims 20, 24, or 41 of Inglis '261 or claim 13 of Inglis '362.

Clearly, the new count of the interference is based on Inglis claims. Inglis never disclosed or claimed more than one mutation in the herpesvirus.

New claims 109 - 148 herein are directed to a feature of the present invention wherein the herpesvirus includes two or more mutations in one or more genes, thereby rendering the

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herpesvirus to be viral genome replication defective. The presently claimed invention provides surprising and unexpected results. Thus, the presently claimed invention is clearly patentable over the interference count.

In the redeclaration of the interference (Paper No. 108) based on the above-discussed Memorandum Opinion and Order (Paper No. 107), the count had a clerical mistake erroneously including "or claim 49 of Knipe". This is a clear error because it was not included in the thorough Memorandum Opinion and Order (Paper No. 107). In any event, the inclusion of claim 49 of Knipe does not change the fact that there is no interference estoppel for new claim 109-148 herein. Claim 49 of Knipe was directed to a vaccine comprising herpesvirus "having a mutation in one or more genes encoding a protein essential for viral replication". Clearly, this is directed to the case where a herpesvirus has duplicate genes encoding the same protein essential for viral replication, for example ICP4. Clearly, this does not anticipate or make obvious two mutations in the same gene or two mutations in genes encoding different proteins.

It is respectfully submitted that the subject application is in a condition for allowance. Early and favorable action is requested. If any issues remain, the Examiner is requested to call Applicants' undersigned attorney to expedite the resolution of such issues.

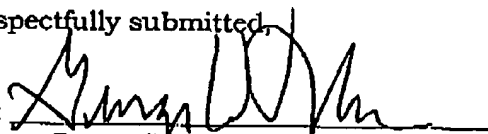
If for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, the Commissioner is hereby authorized and requested to charge Deposit Account No. **04-1105**.

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Respectfully submitted,

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